STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Global NAPs, Inc.	)	
	)	
	)	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Company d/b/a Ameritech Illinois	)	**Docket No. 01-0786**

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

THOMAS R. STANTON
MARY J. STEPHENSON
OFFICE OF GENERAL COUNSEL
ILLINOIS COMMERCE COMMISSION
160 NORTH La SALLE STREET STE. C-800
CHICAGO, ILLINOIS 60601
(312) 793-2877

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The Staff of the Illinois Commerce Commission ("Staff"), by its attorneys, pursuant to Section 761.430 of the Commission's Rules of Practice, 83 Ill. Adm. Code Section 761.430, submits its brief in reply to exceptions to the Administrative Law Judge's ("ALJ") Proposed Arbitration Decision ("PAD") filed by Ameritech Illinois ("Ameritech") and Global NAPs (GNAPs"). The PAD issued on April 4, 2002. Ameritech and GNAPs filed exceptions on April 12, 2002. As discussed more fully below, their exceptions to the PAD are without merit , should be rejected, and the Commission should adopt the PAD.

DISCUSSION

ISSUE 2

I. The PAD Correctly Determined that Ameritech and GNAPs Should Each Bear Its Costs on Its Side of the Point of Interconnection.

The PAD correctly determined that Ameritech and GNAPs should each be responsible for costs on its side of the POI. Its conclusion is consistent with federal and state law, supported by the record, and represents a just and reasonable apportionment of costs that are caused by two carriers jointly provisioning telephone service. Staff recommended that Ameritech and GNAPs should bear their own costs of facilities on their own side of a single POI. Staff Br. at 5; Staff Ex. 1 (Liu) at 14. Staff informed that federal and state law require that Ameritech allow requesting CLECs to elect a single POI arrangement. Staff Br. at 3-4. In addition, Staff demonstrated that it is just and reasonable that Ameritech and a requesting CLEC, here GNAPs, be both physically and financially responsible for its side of the single POI. Staff acknowledged that interconnection imposes costs on both Ameritech and GNAPs, Staff Reply Br. at 3; see Staff Ex. 1 at 5-8, but showed that under Ameritech's proposal, GNAPs would be forced to bear not only costs on its side of the POI, but also Ameritech's costs on Ameritech's side of the POI,

Staff Br. at 9-10; Staff Ex. 1.0 (Liu), at 12-13. Staff showed that Ameritech's proposal would essentially undermine a CLEC's federal and state right to elect a single POI. Staff explained that by requiring GNAPs to bear Ameritech's costs on Ameritech's side of the POI, Ameritech's proposal creates multiple "virtual" POIs along the local calling boundary of the physical POI, thereby undermining GNAPs right to a single POI. Staff Br. at 10; Staff Ex. 1.0 (Liu), at 14-15. In sum, just as GNAPs bears responsibility for all of the costs of its own traffic, and just as Ameritech bears responsibility for all of the costs of calls from one Ameritech customer to another, it is just and reasonable that each carrier bear responsibility for the costs of calls to and from the other carrier on its side of the POI. Staff's proposal is consistent with federal and state law and the Commission's orders.

Ameritech reads the PAD as relying upon only two reasons for its decision. Ameritech BOE at 8. Staff understands the PAD to have adopted Staff's reasoning and recommendation. To the extent not reflected in PAD, however, the ALJ may wish to make clear that it adopted Staff's recommendation and reasoning, which reflects a fair apportionment of costs caused by the joint provision of telephone service between two local exchange carriers (LECs).

In its exceptions, Ameritech repeats many of the arguments that were already addressed by Staff in briefs and rejected by the PAD. For example, Ameritech trots out "cost causer, cost-payer" principles again, (Ameritech BOE at 3), continuing to portray this issue as one "caused" by GNAPs as a result of GNAPs local network design. That simply is incorrect. This issue arises because the Ameritech network and the GNAPs network are configured differently, yet still must interconnect to serve a similar geographic base of customers. Those differences, thus, are not "caused" by GNAPs. In fact, it is just as easy, and correct, to say that those differences are "caused" by Ameritech because Ameritech chose to design its network different than GNAPs

network. Moreover, as Staff further explained, it is entirely inappropriate to look at this issue from the perspective of either Ameritech's or GNAPs' network. Staff Br. at 9. Neither network should be viewed as the "correct" or "benchmark" network. Id.; Staff Ex. 10 (Liu) , at 12. It is the interconnection of both networks that should be the focus of this issue. Indeed, the fact that Ameritech portrays this issue as "caused" by GNAPs network design demonstrates that the Ameritech proposal is inherently biased. It penalizes carriers for designing alternative or innovative networks that may enhance efficiency. Staff Br. at 9. The PAD correctly rejected Ameritech's argument and adopted Staff's recommendation, which is neutral with respect to network architecture and design. Staff's recommendation--that each carrier (regardless of network design) is responsible for its own transport costs to and from the POI--meets this requirement.

In addition, none of the authorities cited by Ameritech justifies modifying the result reached by the PAD. For example, Ameritech cites to a decision from the North Carolina Utilities Commission ("NCUC"), *In re Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140 and P-646, 2001 N.C. PUC Lexis 229, Recommended Arbitration Order (N. Car. Utils. Comm'n Mar. 9 2001) (4 to 2 decision). (Ameritech BOE at 4). After reading the NCUC's decision and bearing in mind Ameritech's description of it as "based on an analysis so thorough and judicious that it cannot reasonably be ignored," (Ameritech BOE at 2), one would have thought Ameritech was referring to the dissenting opinion. A fair comparison of the two opinions reveals that the dissent has the better of the argument on both the law and "equities." Generally speaking, the majority opinion (pp. 9-17) reflects Ameritech's position and the dissenting opinion (pp. 46-56)

reflects Staff's and GNAPs' position. Like Ameritech's proposal, here, the majority opinion viewed the issue as one in which the CLEC's choice of interconnection imposes costs on the ILEC that must in equity be recovered solely from the CLEC. But as Staff explained, that view assumes the ILEC's network is entitled to priority over a CLECs network when the appropriate perspective is a neutral focus on the interconnection of both networks.

Although a majority of the NCUC ultimately determined that the CLEC, AT&T, should bear the costs of the transport beyond the local calling area, it was searching for an equitable and fundamentally fair resolution of the POI issue that did not force a CLEC to bear all of the costs. NCUC Decision, at 16. The NCUC observed that

> [public policy considerations and common sense] would suggest that "while the ILEC should not be expected to bear all the transport costs, neither should the [CLEC]. Perhaps, there is a reasonable apportionment that might be arrived at to reflect the true costs involved. Unfortunately, we have not been provided the record that would make this possible for the Commission to decide at this time

Id.

The PAD provides that fair, equitable, and pro-competitive apportionment by requiring that each carrier bear its own costs on its side of the POI. This conclusion was made based on an ample evidentiary record. As Staff explained, and the PAD accepted, under a POI arrangement, both carriers incur costs in establishing facilities and transporting traffic to and from the POI and each carrier should bear its costs on its side of the POI.

Likewise, the arbitration decision of the South Carolina Public Service Commission ("SCPSC") viewed the issue solely from the perspective of the ILEC, BellSouth. *In re Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc., Pursuant to 47 U.S.C. Section 252*, Docket 2000-527, Order on Arbitration (S. Car. Pub. Serv.

Comm'n Jan. 30, 2001), 2001 S.C. PUC LEXIS 7. The SCPSC considered the CLEC, AT&T's, choice of a single POI as imposing costs only on BellSouth and attempting to shift those costs to BellSouth. Order, at ____ ("The result, if AT&T prevails on this issue, is that AT&T will have succeeded in requiring BellSouth to subsidize AT&T's entry into the local exchange market in South Carolina).[1] The more appropriate perspective, however, and the one adopted by the PAD, looks at the interconnection of both networks and considers the costs to both carriers from the election of a single POI. Moreover, it appears the SCPSC's decision was also based, in no small part, on the erroneous concern that AT&T could require BellSouth to deliver local traffic from South Carolina to a POI located as far away as New York. Id. at ___ ("The Commission declines to approve a concept that could result in BellSouth being required to haul calls hundreds of miles, just because AT&T does not want to make the investment in South Carolina."). The SCPSC was concerned that when BellSouth obtained FCC approval to provide in-region long distance service under Section 271 of the Telecommunications Act of 1996 ("1996 Act"), the LATA boundaries would "evaporate" and AT&T could require BellSouth to deliver all of its traffic originating in South Carolina directly to one of AT&T's switches in New York." Id. at ___. Federal law, however, allows a CLEC to interconnect at a technically feasible POI in each LATA. The LATA boundaries do not "evaporate" or become irrelevant to the conditions on the single POI right once BellSouth obtains in-region long distance approval under Section 271 of the 1996 Act.

Ameritech also cites to an opinion from the Third Circuit Court of Appeals, MCI Telecommunications Corp. v. Bell-Atlantic Pennsylvania, 271 F.3d 491 (3d Cir. 2001). The Third Circuit merely suggested that the Pennsylvania PUC consider the issue of costs

[1] The decision available on LEXIS has no pagination.

surrounding POIs. There is no indication in the opinion that the court considered all relevant FCC rules, the costs WorldCom might incur on its side of the POI, and whether requiring each carrier to bear its own costs is a more equitable solution. The PAD evaluated all of those considerations and more and rejected Ameritech's proposal to shift costs to CLECs. The PAD correctly determined based on the record evidence that Ameritech and GNAPs should bear their own costs on their respective sides of the POI.

Ameritech also contends that a single POI is "expensive interconnection" as the FCC used that term in paragraph 199 of its Local Competition Order, and which would require GNAPs to bear the cost of that interconnection including a reasonable profit. Ameritech BOE at 3; Ameritech Br. at 6-7. It is mistaken. The issue of expensive interconnection as mentioned in Paragraph 199 of the Local Competition Order is inapplicable to the instant dispute. Here, Ameritech seeks recovery for additional transport costs. Ameritech Ex. 3 (Mindell Direct at 17-18) (describing how a local might require expensive transport). And, Ameritech has described its proposal as requiring GNAPs to bear the incremental transport costs caused by GNAPs election of a single POI. Eg., Ameritech BOE at 2. The FCC, however, defines "interconnection" to expressly exclude "transport" and "termination" of traffic. "Interconnection is the linking of networks for the mutual exchange of traffic. This term does not include the transport and termination of traffic." 47 C.F.R. § 51.5 (defining "interconnection"); see Local Competition Order, at ¶¶ 174-76. In addition, the FCC in its Intercarrier Compensation NPRM[2] described the issue in dispute here as one of transport, not interconnection:

> As previously mentioned, an ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point. Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that

[2] In re Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("Intercarrier Compensation NPRM").

> originates on the ILECs network. These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. Application of these rules has led to questions concerning which carrier should bear the costs of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular calling area to the distant single POI. Some ILECs will interconnect at any POI within a local calling area; however if a CLEC wishes to interconnect outside the local calling area, some LECs take the position that the CLEC must bear all costs for transport outside the local calling area. CLECs hold the contrary view, that our rules simply require LECs to interconnect at any technically feasible point within a LATA, and that each carrier must bear its own transport costs on its side of the POI.

Intercarrier Compensation NPRM, at ¶ 112 (footnotes omitted and emphasis added); see id. ¶¶ 113-14 (discussing transport costs). Thus, Ameritech's reliance on the FCC's discussion of "expensive interconnection" in paragraph 199 of its Local Competition Order is misplaced.

In any case, Ameritech has presented no evidence of its costs concerning a single POI arrangement, let alone establish that its purported costs amount to "expensive interconnection." Ameritech submitted no cost studies and provided no evidence from which the Commission could determine that the transport costs Ameritech seeks to recover from CLECs amount to "expensive interconnection" as that term is used by the FCC. Ameritech points to no FCC order or decision describing what constitutes "expensive interconnection" or even which factors this Commission should consider. The sole justification Ameritech gives in support of its contention is that in certain circumstances it will be required to transport calls further than if it alone were the sole provider of local exchange service in its service area. This justification hardly demonstrates a technically feasible, but "expensive interconnection." Based on Ameritech's understanding of "expensive interconnection," apparently the only interconnection network architecture that a CLEC may elect that is not expensive is one that provides for a POI in each

Ameritech local calling area and thus mirrors Ameritech's own architecture. Ameritech's conclusory assertion that a single POI amounts to "expensive interconnection," as that term is used by the FCC, is erroneous, unsupported by the record and, therefore, should be rejected.

Contrary to Ameritech's contention, at least one other state commission has reached the same conclusion as the PAD. The New York Public Service Commission ("NYPSC"), in an arbitration between Verizon New York and AT&T, rejected Verizon's position that AT&T should bear the costs for transporting traffic beyond Verizon's local calling areas to the POI. *Joint Petition of AT&T Communications of New York, Inc., TCG New York, Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc*, Case 01-C-0095, Order Resolving Arbitration Issues (N.Y. Pub. Serv. Comm'n July 30, 2001), 2001 N.Y. PUC Lexis 495 at *50. The NYPSC ruled that "each party [is] responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection." Id.

Furthermore, the PAD is consistent with a recent Proposed Order issued by ALJ Woods in Docket 01-0614. Illinois Bell Telephone Company, Filing to Implement Tariff Provisions Related to Section 13-801 of the Public Utilities Act, Proposed Order, Docket 01-0614 (Illinois Commerce Comm'n Mar. 8, 2002). There, in a proceeding implementing Section 13-801 of the Illinois Public Utilities Act, ALJ Woods' Proposed Order adopted Staff's position and required carriers to bear their own costs on their respective sides of the POI. Id. at 105-106.

A. The PAD Correctly Concluded that Ameritech's Proposal Could Have the Effect of Undermining the Right to a Single POI.

The PAD's conclusion that Ameritech's proposal could have the effect of undermining the right to a single POI is correct and supported by the record. Staff explained that Ameritech's proposal undermines the right to a single POI by effectively creating multiple POIs. Staff Br. at 10. Against the PAD's conclusion, Ameritech contends it should be compensated for the use of its network. Ameritech BOE at 8. Ameritech's argument, however, ignores the fact that the interconnection of Ameritech's network and GNAPs' network for the joint provision of telephone service creates costs for both carriers. Ameritech's asymmetrical proposal provides for the recovery of only its costs, requiring GNAPs to bear the full cost of GNAPs-originated traffic, while failing to require Ameritech to bear the full cost of Ameritech-originated traffic. Staff showed, and the PAD accepted, that requiring each carrier to bear its own costs on its side of the POI is a just and reasonable apportionment of the costs jointly incurred.

The FCC's Verizon Pennsylvania 271 Order does not, as Ameritech contends, "foreclose[] the PAD's conclusion that a requirement that GNAPs pay for transport costs it causes would undermine GNAPs' right to a single POI." Ameritech BOE at 8. In its Verizon Pennsylvania 271 Order, the FCC specifically stated:

> The issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM. We find, therefore, that Verizon complies with the clear requirement of our rules, i.e., that incumbent LECs provide for a single *physical* point of interconnection per LATA. Because the issue is open in our Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities fail to comply with its obligations under the Act.

Verizon Pennsylvania 271 Order, at ¶ 100 (footnotes omitted).

Thus, even assuming for the sake of argument that the FCC had the transport costs at issue here in mind in the Verizon Pennsylvania 271 Order, the FCC did not hold, as Ameritech contends, that its single POI rule is not undermined by an asymmetrical cost recovery proposal like the one

Ameritech proposed here. The FCC merely determined that Verizon's policies distinguishing between the physical and financial aspects of the POI did not violate a clear requirement of its single POI rules, and went no further because the issue of the financial responsibility for interconnection facilities is open in its Intercarrier Compensation NPRM. Id. ¶ 100. Notably, the FCC did not discuss the scope and application of its reciprocal compensation rules, particularly 47 C.F.R. § 703(b), to the allocation of financial responsibility for transport costs. In its Intercarrier Compensation NPRM, the FCC said that it would consider the interplay between its single POI rules and its reciprocal compensation rules. Intercarrier Compensation NPRM, at ¶ 114. Moreover, the FCC has cautioned against drawing inferences regarding the interpretation and application of its rules and policies from conclusions it makes within the limited context of a Section 271 proceeding.[3] *In re Joint Application by SBC Communications, Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001) ("Kansas/ Oklahoma 271 Order"), at ¶ 19; *see Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications, Pursuant to Section 271 of the*

[3] For example, in the Kansas/Oklahoma 271 Order, the FCC explained:

> [D]espite the comprehensiveness of our local competition rules, there will inevitably be, in any section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors—disputes that our rules have not yet addressed and that do not involve *per se* violations of self-executing requirements of the Act. The section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application. Congress designed section 271 proceedings as highly specialized, 90-day proceedings for examining the performance of a particular carrier in a particular state at a particular time. Such fast-track, narrowly focused adjudications are often inappropriate forums for the considered resolution of industry-wide local competition questions of general applicability.

(Kansas/Oklahoma Order ¶ 19 (internal footnotes omitted).

Telecommunications Act of 1996 To Provide In-Region, InterLATA Service in Texas, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 ¶ 25 (rel. June 30, 2000). In the absence of an authoritative contrary pronouncement by the FCC, the PAD's conclusion requiring each carrier to bear the costs on its side of the POI is fully consistent with the FCC's rules and the 1996 Act.

B. The PAD Could Reasonably Conclude that a Single POI Would Not Significantly Increase Ameritech's Transport Costs.

Ameritech excepts to the PAD's finding that delivery of calls to a single POI in each LATA would not significantly increase transport costs and that the incremental costs that Ameritech would incur would be de minimus. Ameritech BOE at 6. GNAPs witness Lundquist testified that Ameritech's incremental transport costs to and from the single POI would be de minimus. GNAPs Ex. 1 (Lundquist Direct), at 26-31. Ameritech witness Mindell testified that the additional transport costs Ameritech would incur is "expensive," but offered no specifics or costing analysis. Ameritech Ex. 3 (Mindell Direct), at 9, 17. Indeed, Ameritech presented no cost studies or information detailing the incremental costs it would incur. As a consequence, the PAD could reasonably conclude based on this record that Ameritech's transport costs would not be significantly increased by a single POI and its additional transport costs would be de minimus.

ISSUE 3

I. GNAPs' Exceptions Should Be Rejected.

A. GNAPs Provided No Exceptions Language In Its Brief On Exceptions.

The Commission's Rules of Practice for Arbitration state:

> Section 761.430 Exceptions; Reply
>
> b) Exceptions and replies to exceptions with respect to statements, findings of fact or rulings of law must be specific and must be stated and numbered separately in the brief. When exception is taken or a reply is made as to a statement or finding of fact*, a suggested replacement statement or finding must be incorporated*. Exceptions and replies may contain written arguments in support of the position taken by the party or staff representative filing such exceptions or reply.

83 Ill. Adm. Code 761.430 (emphasis added).

Although GNAPs' BOE did contain written arguments in support of its position, the brief failed to provide any suggested replacement language. *See* GNAPs BOE at 2-7. Since GNAPs did not include a suggested replacement statement when it took exception to the PAD's conclusion in Issue 3, its exceptions should be ignored.

B. The PAD Correctly Rejected GNAPs' Request To Define Its Own Local Calling Areas.

In any event, GNAPs arguments in its exception to the PAD on Issue 3 are flawed for several reasons. In its BOE, GNAPs argues that it should be allowed to define its own local calling areas ("LCA") and that the various findings of the PAD on this issue should be set aside. *See*, *generally,* GNAPs BOE at 3 *et. seq.* Specifically, GNAPs contends that the Proposed Arbitration Decision, which orders the carriers to use the existing Commission approved LCA in Ameritech's service territory for purposes of intercarrier compensation, is incorrect and "perpetuates the status quo at the expense of the competition and Illinois consumers." Id. at 3.

Contrary to GNAPs assertion, the PAD correctly interprets the existing Commission orders. GNAPs has maintained that Ameritech's and Staff's interpretation, which was affirmed by the PAD, does not encourage competition, or spread benefits to Illinois consumers. Id. at 5. This position is not accurate. GNAPs arguments are based on several defective premises.

First, the PAD did not find that Ameritech's LCA is the most efficient arrangement. It merely found that any changes in the LCA for purposes of intercarrier compensation should be done in an industry-wide proceeding rather than in this arbitration proceeding. PAD at 12. Moreover, as Staff indicated in its reply brief, the Commission has approved Ameritech's existing local calling areas. It has not approved of LATA-wide local calling areas in Illinois. Adopting GNAPs' position would likely require fundamental and far-reaching regulatory changes to Ameritech's existing services, including a comprehensive review of Ameritech's Alternative Regulation Plan and its access and toll revenues. Such a review cannot and should not be done in this arbitration proceeding. Staff Reply Br. at 8-9. Additionally, while GNAPs' proposed LCA is the best arrangement for GNAPs, it may, however, not be the best arrangement for consumers or competition in Illinois. This is yet another reason why issues surrounding LCA should not be addressed in this arbitration proceeding, but rather in a proceeding where all carriers and parties can participate.

GNAPs also contends that Ameritech's application of access charges violates the 1996 Act. GNAPs BOE at 5. GNAPs asserts that in its own defined LCA there are only local calls and no toll calls, *i.e.* the whole GNAPs' LATA is its local calling area. Id. Consequently, GNAPs believes that all the calls from GNAPs' network to Ameritech customers who reside in a different local calling area as defined by the Ameritech's LCA should be treated as local calls

and, thus, GNAPs should not have to pay Ameritech access charges. GNAPs argument is flawed.

The access charges in this instance do not violate the 1996 Act. First, GNAPs can use its own local calling area for its customers, *i.e.* for intra-network calls. Then, as the PAD concluded, GNAPs should use the Commission approved LCA for inter-network calls or inter-carrier compensation. Consequently, whether GNAPs should or should not pay access charges to Ameritech for an inter-network call should be determined by Ameritech's LCA and not by GNAPs' LCA. This is not a violation of the 1996 Act.

Finally, GNAPs asserts that the Commission's rulings with regard to the interconnection agreement do not pertain to ISP bound traffic. GNAPs BOE at 6. GNAPs argues that "intercarrier compensation for ISP bound traffic is controlled wholly by the ISP Order[4] so the Commission has no jurisdiction over it and it cannot be the subject of interconnection agreements." Id. at 6-7. In support of its assertion, GNAPs states the "ISP Order went on to state, 'because we now exercise out authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, … state commissions will no longer have authority to address this issue." Id.

GNAPs' assertion that the state commission has no authority on ISP-bound traffic that is also virtual NXX traffic is not correct. The FCC stated in its Intercarrier Compensation NPRM released on the same day as the ISP Order:

> We seek comment on the use of virtual central office codes (NXXs),[5] and their effect on the reciprocal compensation and transport obligations of interconnected

[4] *Implementation of Local Competition Provisions In the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic,* Order on Remand and Report and Order, 16 FCC Rcd. 9151 at ¶ 59 (rel. April 27, 2001) ("ISP Order").

[5] Virtual NXX codes are central office codes that correspond with a particular geographic area that are assigned to a customer located in a different geographic area.

> LECs. Commenters in this proceeding have indicated that some LECs are inappropriately using virtual NXXs to collect reciprocal compensation for traffic that the ILEC is then forced to transport outside of the local calling area. We note that the Commission has delegated some of its authority to state public utility commissions in order that they may order the North American Numbering Plan Administrator (NANPA) to reclaim NXX codes that are not used in accordance with the Central Office Code Assignment Guidelines. The Maine Public Utility Commission recently addressed the issue of virtual NXXs when it directed the NANPA to reclaim the NXX codes that Brooks Fiber used to provide "unauthorized interexchange service" as opposed to "facilities-based local exchange service." In light of these developments, we seek comment on the following issues: (1) Under what circumstances should a LEC be entitled to use virtual NXX codes? (2) If LECs are permitted to use virtual NXX codes, what is the transport obligation of the originating LEC? (3) Should the LEC employing the virtual NXX code be required to provide transport from the central offices associated with those NXX codes?

Intercarrier Compensation NPRM at ¶ 151 (several internal footnotes omitted).

Consequently, state commissions do have authority over virtual NXX traffic as well as the financial issues related to NXX traffic that are under consideration at the FCC.

For all the reasons set forth above, the PAD's conclusion that GNAPs should not be allowed to define its own LCA and that the Commission approved LCA should be utilized by the carriers is reasonable, clear and unambiguous and therefore, should not be revised.

ISSUE 4

I. The PAD Correctly Required Ameritech and GNAPs to Each Bear Its Costs on Its Side of the POI for Foreign Exchange (FX) and FX-Like Traffic.

The PAD appropriately adopted the reasoning in the Commission's Level 3 Arbitration Decision[6] and required Ameritech and GNAPs to each bear its costs on its side of the POI for FX and FX-like traffic. In its Level 3 Arbitration Decision, the Commission found in favor Level 3 on the issue of whether Level 3 should be required to compensate Ameritech for interexchange transport and switching associated with Level 3's FX/virtual NXX service. Id. at 6-9. The Commission indicated that in the provision of FX and FX-like service the originating carrier is responsible for the cost of delivering a call to the network of the other carrier who will terminate the call, but that the carrier terminating the call is not eligible for reciprocal compensation for terminating non-local calls. Id. at 9. The PAD concluded that Ameritech presented no compelling reason to justify departing from that decision at this time.

Ameritech first attempts to inject uncertainty into the PAD's conclusion regarding FX and FX-like traffic, suggesting that the PAD decided the issue in its favor. Ameritech BOE at 10. The PAD, however, rejected Ameritech's position that GNAPs should bear transport costs on Ameritech's side of the POI for FX and FX-like traffic. The PAD is clear that Ameritech and GNAPs are to bear their own costs on their respective sides of the POI. If not, it should be clarified to reflect this conclusion. Perhaps the following sentence will accomplish that result: "Regarding FX or FX-like traffic, the Commission adopts Staff's recommendation and, like the our conclusion in Issue 2 concerning local traffic, each party should also bear its costs on its side

[6] Level 3 Communication Inc., Petition for Arbitration Pursuant to Section 252 (b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Arbitration Decision, ICC Docket 00-0332, (Aug. 30, 2001) ("Level 3/Ameritech Arbitration Decision").

of the POI for FX and FX-like traffic. The Commission has reached a similar conclusion in the Level 3 Arbitration Decision and finds, based on the record in this proceeding, no compelling reason to depart from that decision at this time." (If retained, the ALJ may wish to delete the second appearance of the word "not" in the last sentence of the "Commission Analysis and Conclusion" section as it currently appears on page 15.)

Absent a favorable ruling, Ameritech excepts to the PAD's conclusion. Ameritech contends its proposal is consistent with the Commission's Level 3 Arbitration Decision. Ameritech BOE at 13-15. There is no merit to its contention. The conclusion in the Level 3 Arbitration Decision is equally applicable here and there is no persuasive reason to carve out an exception to that decision that Ameritech seeks here. Moreover, none of the decisions from other state commissions cited by Ameritech warrant the PAD departing from the Commission's decision in the Level 3 Arbitration Decision and its conclusion in this proceeding. Thus, like the PAD's conclusion in Issue 2 concerning local traffic, the PAD correctly concluded that each party should bear its costs on its side of the POI for FX and FX-like traffic.

CONCLUSION

For all of the foregoing reasons, the Commission should adopt the Proposed Arbitration Decision.

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Respectfully submitted,

By: /s/_____

THOMAS R. STANTON
MARY J. STEPHENSON
Illinois Commerce Commission
Office of General Counsel
160 North LaSalle St., Suite C-800
Chicago, IL 60601
(312) 793-2877

Staff Counsel